



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

September 23, 2003

Ms. Kimberly Mickelson
Olson & Olson
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2003-6680

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188136.

The City of Jersey Village (the "city"), which you represent, received a request for "the name(s) and address(es) of the party(ies) who made complaints regarding the parking of motor vehicles in my private driveway." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You also believe that this request for information implicates the privacy or proprietary interests of a private individual. We have considered your arguments and have reviewed the information you submitted.

We first note that you have marked most of the submitted information as not being responsive to this request for information. This decision does not address the information that is not responsive to the request, and the city need not release that information.

The city contends that the requested information is protected by the common-law informer's privilege under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception incorporates the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which a governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not

already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See* Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You assert that the release of the requested information "will have a chilling effect on reports of ordinance violations." You do not inform us, however, that the requested information relates to an alleged violation of any specific city ordinance that would be punishable by a civil or criminal penalty. We therefore conclude that the city has not demonstrated that any of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Next, we address your claim that the requested information implicates the privacy and proprietary interests of a private individual. Section 552.305 of the Government Code provides that if a governmental body believes that a request for information implicates a third party's privacy or proprietary interests, the governmental body may decline to release the requested information for the purpose of requesting an attorney general decision under section 552.301. *See* Gov't Code § 552.305(a). Section 552.305(d) provides that if a third person's proprietary information may be protected from public disclosure under sections 552.101 or 552.110, the governmental body must make a good-faith attempt to provide written notice to the person of the governmental body's request for a decision and of the interested person's right to submit to the attorney general, not later than the tenth business day after the date of the person's receipt of the governmental body's notice, a statement of the reasons why the requested information should not be released. *See id.* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

You do not inform this office that the city has provided the written notice prescribed by section 552.305(d) to the individual to whom the requested information pertains. Furthermore, this office has received no correspondence from that individual. *See also* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released). Therefore, there has been no demonstration that any of the requested information is proprietary for purposes of section 552.110 of the Government Code. *See, e.g.,* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

You also believe that this request for information implicates the private individual's privacy interests. Section 552.101 of the Government Code also encompasses the common-law right to privacy. Common-law privacy under section 552.101 protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common-law right to privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private).

In Open Records Decision No. 169 (1977), this office concluded that under certain "special circumstances," privacy under section 552.101 will protect information that ordinarily would be subject to public disclosure. *Id.* at 6-7. However, such "special circumstances" encompass a very narrow set of situations. *Id.* at 6. "Special circumstances" do not include a mere desire for privacy or "a generalized and speculative fear of harassment or retribution." *Id.* On the other hand, they do include situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." *Id.* We determine whether a request for information presents such "special circumstances" on a case-by-case basis. *Id.* at 7.

In this instance, you state that the private individual to whom the requested information relates "does not wish their identity or other information to be released, for fear of harassment." You do not inform us, however, that the city has any specific reason to believe that the release of the requested information would place this private individual in any danger. We therefore conclude that the city has not demonstrated the existence of any special circumstances that justify the withholding of any of the requested information under section 552.101 of the Government Code.

We note, however, that the requested information contains the private individual's e-mail address. With regard to this information, section 552.137 of the Government Code provides as follows:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. The personal e-mail address that we have marked is confidential under section 552.137. You do not inform us that the individual to whom this e-mail address belongs has consented to its public disclosure. Therefore, the city must withhold the marked e-mail address under section 552.137 of the Government Code. The city must release the rest of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

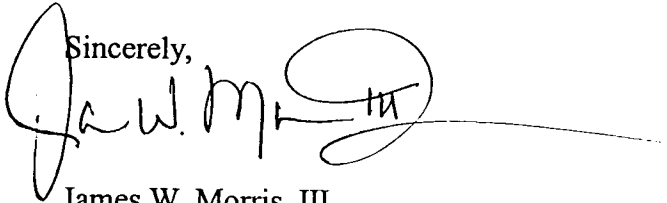
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 188136

Enc: Submitted documents

c: Ms. Cheryl Desforges
16309 Lakeview Drive
Jersey Village, Texas 77040-2029
(w/o enclosures)